UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MARK I. SOKOLOW, et al.,

Plaintiffs,

v. 04 CV 397 (GBD)

PALESTINE LIBERATION ORGANIZATION, et al.,

Defendants.

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New York, N.Y.
February 20, 2015
9:30 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

APPEARANCES

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Attorneys for Plaintiffs
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(In open court, jury not present)

THE COURT: Good morning. I think we have five or six jurors, so as soon as the rest arrive, we'll start.

I received a letter from the defense. Mr. Yalowitz, did you want to respond?

MR. YALOWITZ: Yes, that would be great. I have only been able to read it this morning, so there are some things I won't be able to respond to with particularity, but let me go through it briefly.

First of all, the first request is that the defendants are asking you to modify the language that comes from the *Coppers* case about a person who can fairly be considered to represent the PA or the PLO. My view, having heard the argument of the defendants, which certainly suggested that only a supervisory employee can be fairly considered to represent the PA or PLO, which is not consistent with the law, and frankly not consistent with the instructions drafted, I'm equally concerned about it.

And I think that the Court should correct the instruction by adding to it the first sentence in my proposed instruction number 14 from August 8, which is an entity can be held liable for the acts of its managerial agents that are done on behalf and to the benefit of that entity and directly related to the performance of the duties, the agent or employee -- that's a slight modification -- the agent or

employee has the authority to perform.

THE COURT: I don't think that addresses their issue at all. Their issue is not with managerial employee, so I don't see that's what the issue is.

MR. YALOWITZ: I think the issue -- well, we have now changed it to supervisory employee. So their contention is supervisory employee -- let me look at what your Honor's current jury charge has on this and let me tell you how I think it should be corrected.

It says plaintiffs must demonstrate the involvement of a senior official or other person having duties of such responsibility that his or her conduct may fairly be considered to represent the PLO or PA. And I had understood that lead-in sentence to capture both agents and employees acting within the scope of their employment.

THE COURT: When you say correct it, I don't believe there's anything incorrect about what this jury instruction says in any regard, and I don't even know if that's their argument. Their argument is not that I need to correct the jury instruction, their argument is that I had need to correct you.

MR. YALOWITZ: I think that I fairly captured what this instruction says. The defendants are now arguing no, this instruction limits respondeat superior in a way that I think their argument is incorrect. So if there is a correction to be

made in some regard, it's not to something I said, it's to make it clear that this instruction is not -- doesn't override the other instruction on respondeat superior or an agency.

THE COURT: There's no reason the jury should assume that by the overall instruction. There's nothing wrong with this instruction. The question is, as they say -- and you can respond to it further if you want, but they say you misstated the law, and misstated the law inconsistent with the jury instruction. That's their argument.

MR. YALOWITZ: Well, I guess I would disagree with both of those things. I don't think I misstated the law in any particular or in any generality, certainly not about respondeat superior, certainly not about this instruction as we discussed it. I think that if there is any change that needs to be made to this, it would be to clear up that this language that we're discussing does not override the other language that we're discussing.

THE COURT: And you think the jury somehow thinks that something overrides something else in this instruction because it's inconsistent with it?

MR. YALOWITZ: I think that --

THE COURT: These are the instructions you both approved. You told me these are adequate, correct instructions.

MR. YALOWITZ: I didn't have a problem with this

instruction until I got a letter this morning saying that this instruction means something different from what I thought we all understood it meant. So if the instruction means what I thought it meant, which is that it fairly describes -- fairly considered means they have to be an agent acting within the scope of their authority or a supervisory employer or an employee acting within the scope of their authority, then I don't have a problem with this instruction. If the instruction means what Ms. Ferguson is now saying it means, then I think we need to clear it up. That's all I'm saying about that.

THE COURT: Let's go past that. We have ten jurors. As soon as they get here, I will tell you what I'm going to do.

So just quickly, I don't need to you go through each one of them, but just give me --

MR. YALOWITZ: There are three items where I think we have -- there are four items that I want to touch on briefly.

One is personnel. I think the Court's instruction is adequate on personnel. I don't have a problem with the Court's instruction. We have discussed the provision of personnel multiple times during the course of the trial, evidence came in on that. I don't think you need to change that at all. If you are going to change it, I would ask for a more fulsome personnel description which I asked you for, and I just renew that request.

On ratification, same thing, we discussed it multiple

times. I don't think that I was arguing for ratification. I think the evidence post-attack conduct goes clearly to the scope of employment, history of the relationship as borne out in actual practice, but if there's any concern about that, and I think there is, based on this letter, then we need to renew our request for a ratification charge. So I'm doing that.

Same with alter ego. I think the arguments we made fairly went to the agency theory. An agent can be another entity. I think the evidence clearly goes to agency. But if there is a problem with it, and there seems to be based on this letter, we're renewing our request, number one, for alter ego, and number two for that clarifying instruction by Judge Sand which I asked for in my request number --

THE COURT: What you're arguing -- you're arguing past each other. You're arguing to me -- they argued to me that what you said is inconsistent with the law and inconsistent with my jury instructions. You want to argue that to me to, the extent it's inconsistent with what I argued, you want me to change the jury instructions to match what you argued. That's not the way it works.

MR. YALOWITZ: Let me be clear, I don't think I made any argument inconsistent with your jury instructions. I was very careful about that, very thoughtful about that. I thought about it in advance and executed on what I thought your jury instructions charged. They're now -- so I don't think you

should give them any relief at all. They now raised issues that make me concerned that they're going to go to the circuit and say that you committed error by --

THE COURT: They didn't say that, they said you committed error. Whatever error they say I committed they say I committed long before I wrote this. So when I wrote this, both sides said that, other than the other objections they made, that this is a correct statement of the law. It may not have everything that you want in it, but there's very little here that either side argued to me that is not a correct statement of the law.

MR. YALOWITZ: Let me be even clearer, I don't think anything in this jury instruction is an incorrect statement of law. I don't think anything in this jury instruction is an incorrect statement of law. There are things that I think the law and the evidence support. I have been very clear about what those are. I asked you for those things. To the extent that they're put in play again by this letter, I'm renewing those requests.

THE COURT: Well, that's not the solution to their complaint, so I'm rejecting that out of hand as a solution to their complaint. If you have any other argument that they have an illegitimate complaint or that there is another solution to the complaint in terms of what I should tell the jury, then I'm willing to consider it. But the solution is not for me to try

to now fashion my instructions in a way that is more consistent with the way you wanted to the argue.

MR. YALOWITZ: No, that's not what I'm saying. I think we're fine on that, we can move past it. I don't think anything in this letter is legitimate. So let me be very clear about that. If there are concerns that you want to discuss about particular things, then I will discuss them as long as you would like.

THE COURT: The only thing -- well, let me tell you where I am. I don't think that the relief that they request for the complaint that they complain of is the appropriate action for me to take. I think that the only thing that I would consider doing for both sides, if the defense wishes that I do it, is to add a further instruction that says both sides have commented upon and expressed their view as to what the law is and how the law should be applied. You may obviously consider their arguments, but you are to be guided by my complete instructions on the law and not the lawyers' view of what the law is and how you should apply it.

If you want that instruction, I will give that instruction, but I'm not going to comment on each one of the arguments and now fashion an instruction commenting on each one of the arguments that the plaintiff made to try to go behind the plaintiff to try to say oh, the plaintiff misstated the law on this issue.

Quite frankly, I don't quite agree with the position that the law was misstated. At best they have an argument that somehow you said something that might be misinterpreted, but as I already instructed this jury and will continue to instruct this jury, and if you want me to emphasize it in light of the final arguments that the law only comes from the Court and neither what the lawyers say is not fact or law, and they're the judges of the facts, I am the sole Judge of the law.

So I will repeat for you this instruction, and I will turn to the defense and ask whether or not they wish for me to give that instruction. If they say no, that is the end of it. If they say yes, unless you have some strong objection to that instruction, that's the instruction that I'm going to give the jury to guide them, which is consistent with my instructions. And this is no more unusual case than any other case where, regardless of what the lawyers say in their argument, it is the Judge's instructions on the law that the jury must follow.

And so I will say it one more time, both sides have commented upon and expressed their view as to what the law is and how the law should be applied. You may obviously consider their arguments, but you are to be guided by my complete instructions on the law and not the lawyers' view of what the law is and how you should apply it.

Does the defense want me to give that instruction?

MR. ROCHON: So long as our other issues are deemed

preserved, yes is the answer.

MR. YALOWITZ: I have the same view as Mr. Rochon.

THE COURT: Now with regard to the -- the only other issue I am addressing is about the comment upon the missing witness.

MR. ROCHON: That's what I was going to stand up to ask you to do.

THE COURT: I'm inclined to give a missing witness charge, a little bit modified, and in the form that I am giving you from Sand, and the only words I add, unless otherwise indicated. That's what I propose to give in light of the argument. Does the defense want me to give that instruction?

MR. ROCHON: Yes.

THE COURT: Mr. Yalowitz?

MR. YALOWITZ: I don't have a problem with that instruction as regards to Tirawi, I do have a concern about that instruction with regards to Nobani.

THE COURT: Since I'm not mentioning either one of those witnesses, it doesn't concern me. That's why I don't do it that way. I don't marshal the evidence for the jury, you do that. You make whatever comments you wanted to make about missing witnesses. That's why I put otherwise indicated.

If you think it's indicated as to one and not indicated as to the other, that's the instruction that applies to it. It's the facts of the case and it's not the argument

about why they're not here that advances any argument, it is what is the evidence or lack of evidence that is here before this jury.

But you made the argument that there are missing witnesses, so unless the jury sees that -- they see an explanation that explains that or says that it's not -- you didn't have an opportunity to present that witness, and I'm not sure you presented any evidence that you didn't have an opportunity to present any of these witnesses, but I'm giving you this to at least let the jury make their own determination in light of your argument. But I'm not sure what else you want me to say.

MR. YALOWITZ: Look, I have a problem with this instruction in the context of this case. You have to be the judge of this. I have a problem with it.

THE COURT: You made such an argument. You made an argument that there was a missing witness.

MR. YALOWITZ: I made the argument there were a lot of missing witnesses. I don't deny that.

THE COURT: Then I think the jury is entitled to some instruction. I think they're right, the jury is entitled to some instruction with regard to whether or not how it should play a part in their determination in this case. And it shouldn't play a part in their determination of this case unless you convinced them that they have some witness who could

have been helpful to them and that one would reasonably expect that they would have called that witness instead of you. They can't assume that witness was going to be in your favor. They can't assume anything about what that witness is going to say.

MR. YALOWITZ: Let me briefly set out my views on this, very briefly. And I think this needs to be your decision, obviously. But look, we had no witnesses from the security forces, we had no witnesses who served with these people, we had no witnesses who supervised these people, we had no witnesses who said don't do this, and the absence of the defendants' own employees from among their hundred thousand employees is significant.

And with regard to --

THE COURT: But that's not true. It's the absence of relevant testimony that is significant, it's not the absence of the individuals. So it is a legitimate argument for you to make that no one came in and gave that testimony, it is irrelevant that they didn't parade in a hundred people.

MR. YALOWITZ: And let me just add that with regard to the two individuals, I think I was very careful, I didn't say they didn't call Tirawi and they should have.

THE COURT: You certainly implied that.

MR. YALOWITZ: I said he's such a free man, where is he?

THE COURT: Wow. That's lawyer's semantics. The jury

got the point. And that was the point that you wanted to make: If this guy was going to deny, why wasn't he here to deny?

I'm not saying that is not a legitimate argument. Obviously they didn't have such evidence to present, for whatever reason, and you didn't have any interest or he didn't have anything that was going to be helpful to you, so you didn't call him.

Obviously if he was going to say yes, I was involved in terrorism and I was the one that got the terrorist to do this act, you would have called him, or you would have paraded his deposition like you did anybody else.

So that's the best that I can do for you on this issue. You raised the issue, and as I say, I think they're entitled to some instruction to guide them, and I think this is the fairest way to address it at this point.

MR. YALOWITZ: I would -- I disagree, but I respect the Court's ruling on that. We can move forward.

THE COURT: All right. Then let's move forward.

MR. YALOWITZ: And I think you understand my position.

THE COURT: Yes, thank you. Let's get the jury and let me charge the jury and let them begin their deliberations.

(Continued on next page)

(Jury present)

THE COURT: Now ladies and gentlemen, you are about to enter your final duty, which is to decide the fact issues in the case.

Before you do that, it is my duty to instruct you on the law.

I told you at the very start of the trial that your principal function during the taking of testimony would be to listen carefully and observe each witness who testified. It has been obvious to me and to counsel that you have faithfully discharged this duty. It is evident that you followed the testimony with close attention.

I ask you to give me that same careful attention as I instruct you on the law.

Now you have heard of all the evidence in the case, as well as the final arguments of the lawyers for the parties.

It is your duty to accept these instructions of the law and apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you. Both sides have commented upon and expressed their views to what the law is and how the law should be applied. You may obviously consider their arguments, but you are to be guided by my complete instructions on the law and not the lawyers' view of what the law is and how you should apply it. If any attorney has stated a legal principle different

from any that I state to you in my instructions, it is my instructions you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have about what the law may be or ought to be, it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

Your final role is to pass upon and decide the fact issues of the case. You, the members jury, are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the testimony, and you draw whatever reasonable inferences you decide to draw from the facts as you have determined them.

I shall later discuss with you how to pass upon the credibility or believability of the witnesses.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. In this connection, you should bear in mind that a question put to a witness is never evidence. It is only the answer which is

evidence. But you may not consider any answer that I directed you to disregard or that I directed be struck from the record. Do not consider such answers.

At times a lawyer may have incorporated into a question a statement which assumed certain facts to be true and asked the witness if the statement was true. If the witness denies the truth of a statement, and if there is no evidence in the record proving that the assumed fact is true, then you may not consider the fact to be true simply because it's contained in the lawyer's question.

For example, if a witness was asked the question, "Do you own a red automobile?" you would not be permitted to consider as true the assumed fact that the witness owns an automobile, unless the witness indicates that he or she owns an automobile, or unless there is some other evidence in the record that the witness owns an automobile.

In short, questions are not evidence, answers are.

Nor is anything I may have during the trial or may say during these instructions to be taken in substitution for your own independent recollection of the evidence. What I say is not evidence. Anything you may have seen or heard about this case outside of this courtroom is not evidence and must be entirely disregarded.

The evidence before you consists of the answers given by the witnesses, the sworn testimony they gave, as you recall

it, and the exhibits that were received in evidence, plus any stipulations of the parties. Remember a stipulation is an agreement among the parties that a certain fact is true. You should regard such agreed-upon facts as true. Exhibits which have been marked for identification but not received in evidence may not be considered by you as evidence. Only those exhibits admitted in evidence may be reviewed by you in the jury room.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not in any indication of my views of what your decision should be as to whether or not the plaintiffs have proven their case.

You are expressly to understand that the Court has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice as to any party. You should consider the evidence in light of your common sense and experience.

Some of the testimony before you is in the form of depositions. A deposition is simply a procedure where the attorneys for each side may question a witness or an adversary party under oath before a court stenographer prior to trial.

This is part of the pretrial discovery, and each side is entitled to take depositions. All plaintiffs and defendants are given advance notice of the scheduled deposition of witnesses and all parties are entitled to be present and their lawyers are entitled to question the witness. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness given at trial.

Now it is the duty of the attorneys to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsel also have the right and duty to ask the Court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the Court. You should not show any prejudice against an attorney or a party because an attorney objected to the admissibility of evidence or asked for a conference out of the hearing of the jury or asked the Court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not indicate any opinion about the weight or effect of the evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Now in determining the facts, the jury is reminded that before each member was accepted and sworn to act as a

juror, he or she was asked questions concerning competency, qualifications, fairness and freedom from prejudice and bias. On the faith of those answers, the juror was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then and should remain so until the jury is discharged from consideration of this case.

Now your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the plaintiffs sustained their burden of proof, any personal feelings you may have about any party's race, religion, national origin, sex or age.

It would be equally improper for you to allow any feelings you might have about the nature of the claims to interfere with your decision-making process.

To repeat, your verdict must be based exclusively upon the evidence or the lack of in the case.

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial, hard-core question that you must ask yourselves as you sift through the evidence is: Have the plaintiffs proven their case by a preponderance of the evidence?

It is for you alone to decide whether the plaintiffs have proven their case solely on the basis of the evidence and

subject to the law as I charge you. It must be clear to you that once you let fear or prejudice or bias or sympathy interfere with your thinking, there is a risk that you would not arrive at a true and just verdict.

Now there are two types of evidence which you may properly use in reaching your verdict. One type of evidence is called direct evidence. Direct evidence is where a witness testifies to what he or she saw, heard or observed. In other words, when a witness testifies about what is known to him or her of his or her own knowledge by virtue of his or her own senses, what he or she sees, feels, touches or hears, then that is called direct evidence.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. There is a simple example of circumstance evidence which is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and could you not look outside.

As you were sitting here, someone walked in with an umbrella which was dripping wet. Somebody else then walked in with a raincoat, which was also dripping wet.

Now you cannot look outside of the courtroom and you cannot see whether or not it is raining, so you have no direct evidence of that fact. But on the combination of facts which I

have just given you, it would be reasonable and logical for you to conclude it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one or more established facts the existence or the non-existence of some other fact.

Circumstantial evidence is of no less value than direct evidence, for it is a general rule that the law makes no distinction between direct and circumstance evidence but simply requires that your verdict must be based on a preponderance of all of the evidence presented.

During the trial you may have heard the attorneys or the Court use the term "inference," and in their arguments the attorneys may have asked you to infer on the basis of your reason and experience and common sense, from one or more established facts, the existence of some other facts.

An inference is not a suspicious or a guess, it is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The plaintiffs ask you to draw one set of inferences while the defendants ask you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in

evidence is not a matter of guesswork or speculation. An inference is a deduction or a conclusion which you, the jury, are permitted draw, but are not required to draw, from the facts which have been established by either direct or circumstance evidence. In drawing inferences, you should exercise your common sense.

So while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

You have heard evidence during the trial that witnesses may have discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I should tell that you there's nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be aware of the subjects he or she would be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight you give to the fact or the nature

of the witness's preparation for his or her testimony, and what inferences you draw from such preparation, are matters completely within your discretion.

Now among the exhibits received in evidence were photographs. These photographs purport to depict various locations, individuals, or objects relevant to the issues in this case. These photographs were received in evidence to assist you in making your evaluation of the testimony relating to the locations, scenes, individuals, or objects depicted therein.

You are the sole judges of the accuracy of these photographs, and you are the sole judges of the weight to be given to such photographs.

The parties have also presented exhibits in the form charts and summaries. I decided to admit some of these charts and summaries in place of or together with the underlying documents that they represent in order to save time and avoid unnecessary inconvenience. You should consider the charts and summaries admitted into evidence as you would any other evidence.

Now you have heard testimony from expert witnesses. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in

understanding the evidence or in reaching an independent decision on the facts. In weighing the expert's testimony, you may consider the expert's qualifications, his or her opinions, his or her reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony.

You may give the expert testimony whatever weight, if you any, you find it deserves in light of all the evidence in this case. You should not, however, accept an expert's opinion testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

You have had an opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and the importance of his or her testimony.

It must be clear to you by now that you are being called upon to resolve various factual issues. You will now have to decide the factual issues, and an important part of that decision will involve making judgments about the testimony of the witnesses you have listened to and observed.

In making those you judgments, you should carefully scrutinize all of the testimony of each witness, the

circumstances under which each witness testified, and any other matter in evidence which may help you to decide the truth and the importance of each witness's testimony.

Your decision whether or not to believe a witness may depend on how the witness impressed you. Was the witness candid, frank, and forthright, or did the witness seem as if he or she was hiding something, being evasive or suspect in some way. How did the way the witness testified on direct examination compare with the way the witness testified on cross-examination? Was the witness consistent in his or her testimony or did he or she contradict himself or herself? Did the witness appear to know what he or she was talking about, and did the witness strike you as someone who was trying to report his or her knowledge accurately?

You do not have to accept the testimony of any witness, even one who has not been contradicted or impeached, if you find the witness not to be credible. You have to decide which witnesses to believe and what facts are true. To do this you must at look at all of the evidence, drawing upon your own common sense and personal experience.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to mistrust such witness's testimony in other particulars, and you may reject all of the testimony of that witness or give it such credibility as you may think it deserves. You may accept all,

part, or none of the witness' testimony.

Now how much you choose to believe a witness may be influenced by the witness's bias. Does the witness have a relationship with the plaintiffs or the defendants which may affect how he or she testified? Does the witness have some incentive, loyalty, or motive that might cause him or her to shade the truth; or does the witness have some bias, prejudice, or hostility that may have caused witness, consciously or not, to give you something other than a completely accurate account of the fact he or she testified to?

Even if the witness was impartial, you should consider whether the witness had an opportunity to observe the facts he or she testified about, and you should also consider the witness's ability to express himself or herself. Ask yourselves whether the witness's recollection of the facts stands up in light of all of the other evidence.

In other words, what you must try to do in deciding credibility is to size up a person in light of his or her demeanor, the explanations given, and in light of all of the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember that you should use your common sense, your good judgment, and your experience.

You may have heard evidence that at some earlier time

a witness made a statement which counsel argues is inconsistent with the witness's trial testimony. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself or herself. If you find that the witness made an earlier statement that conflicts with his or her trial testimony, you may consider that fact in deciding how much of that trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocence mistake. Whether the inconsistency concerns an important fact or whether it had to do with a small detail, whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight to give the inconsistent statement in determining whether to believe all or part of the witness's testimony.

There are several persons whose names you heard during the course of the trial but who did not appear here to testify, and one or more of the attorneys referred to their absence from the trial. I instruct you that unless otherwise indicated, each party had an equal opportunity or lack of opportunity to

call any of these witnesses. Therefore, you should not draw any inference or reach any conclusion as to what they would have testified had they been called. Their absence should not affect your judgment.

Now ladies and gentlemen, this is a civil case, and as such, the plaintiffs have the burden of proving the material allegations of the complaint by a fair preponderance of the evidence. As it has been referred to, the plaintiffs have the burden of proving each essential element of the claims by a preponderance of the evidence.

If, after considering all of the evidence, you are satisfied that the plaintiffs have carried their burden on each point as to which plaintiff has the burden of proof, then you must find for the plaintiffs on that claim. If, after such consideration, you find the evidence offered by both sides to be in balance or equally probable, then the plaintiffs have failed to sustain their burden, and you must find for the defendants.

Each individual plaintiff has the burden of proving, as I said, every disputed element of his or her claim to you by a preponderance of the evidence. If you conclude that the plaintiff who bears the burden of proof has failed to establish the claim by a preponderance of the evidence, you must decide against that plaintiff on the issue you are considering.

What does a preponderance of the evidence mean? To

establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true. A preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a claim has been proved by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, and all the relevant exhibits received in evidence, regardless of who may have produced them.

If you find that the credible evidence on a given issue is evenly divided between the parties, that it is equally probable that one side is right as it is that the other side is right, then you must decide that issue against that plaintiff. That is because the party bearing this burden must prove more than simple equality of the evidence, plaintiffs must prove the element at issue by a preponderance of the evidence. On the other hand, plaintiffs need prove no more than a preponderance. So long as you find that the scales tip, however slightly, in favor of the plaintiff, that what the plaintiff claims is more likely true than not true, then that element will have been proved by a preponderance of the evidence.

Some of you may have heard of proof beyond a reasonable doubt, which is the proper standard in a criminal case. That requirement does not apply to a civil case such as

this, and you should put that out of your mind.

In this trial each plaintiff claims that they were injured by one of six separate terrorist attacks. To establish defendants' liability for any specific attack, plaintiffs must prove the element of liability that I will explain to you with regard to that specific attack.

Proof of liability relating to one terrorist attack would not automatically constitute proof of liability relating to any other attack. You must consider each of the six attacks separately.

Similarly, evidence that might be relevant to one attack might or might not be relevant to others. In considering whether a particular item of evidence is relevant to a particular attack, you should use your common sense. Evidence of events or actions that occurred before or after a particular terrorist attack may or may not be relevant to that attack.

Now the evidence as to each defendant is also to be considered individually, and you should render a separate verdict as to each defendant with regard to each separate attack.

Each defendant is entitled to your separate consideration. The question of whether liability has been proven is personal to each defendant and must be decided by you as to each defendant individually on each claim.

The law to be applied to the plaintiffs' claims is the federal Anti-Terrorism Act, which you have heard referred to as the ATA. The ATA provides a remedy for U.S. citizens or their heirs, survivors, or estates, who can prove that they suffered injury to their person, property or business by reason of an act of international terrorism.

Therefore, plaintiffs must prove the following elements:

First, that the defendant, through its employees or agents, committed an act of international terrorism within the meaning of the statute;

Second, that the defendant acted knowingly;

Third, that U.S. citizens suffered injury to their person, property or business, as a result of a terrorist attack; and

Fourth, that the defendants' acts of international terrorism caused these injuries.

The defendants may be found liable for a violation of the ATA if plaintiffs have proven each of these elements by a preponderance of the evidence.

Now a person acts knowingly, as I refer to the second element, if he or she acts intentionally and voluntarily and not because of ignorance, mistake, accident or carelessness. Whether defendants acted knowingly may be proven by their conduct or by all of the facts and circumstances surrounding

the case.

One way in which plaintiffs can prove that defendants acted knowingly is by proving the defendants deliberately closed their eyes to a fact that otherwise would have been obvious to them. In order to infer that the defendants deliberately closed their eyes to a fact, you must find that two things have been established:

First, that the defendants were aware of the high probability of the fact in question;

Second, that the defendants consciously and deliberately avoided learning of that fact.

That is to say, defendants willfully made themselves blind to that fact. It is entirely up to you to determine whether the defendants deliberately closed their eyes to the fact, and if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant.

Now the term "terrorism," as I used it, means premeditated, politically motivated violence against noncombatant targets by subnational groups or clandestine agents.

Under the ATA, the term "international terrorism" means activities that:

First, involve violent acts or acts dangerous to human

life;

Second, are a violation of a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States, or of any state;

Third, appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by mass destruction, assassination, or kidnapping; and

Fourth, occur primarily outside of the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

Therefore, to prove that defendants committed acts of international terrorism, plaintiffs must prove that the defendants' conduct violated, as I say, criminal laws of the United States.

Plaintiffs allege that the PA and the PLO committed crimes that would be illegal if committed in the United States, including murder, attempted murder, and criminal assault.

Murder is the unlawful intentional killing of a human being.

Attempted murder. A person is guilty of attempted

murder if he or she intended to commit the crime of murder, and caused physical injury by some act that was a substantial step in an effort to bring about or accomplish the crime of murder.

(Continued on next page)

THE COURT: A person is guilty of the crime of criminal assault when, with the intent to cause serious physical injury to another person, he or she causes such injury to that person or another person.

For purposes of the ATA, intent means conscious objective or purpose. It is not required that the person who is injured be the same person who was intended to be injured.

Therefore, I instruct you as a matter of law, if you find that the plaintiffs have proved by a preponderance of the evidence that the PA or the PLO committed murder, attempted murder or criminal assault, intending to intimidate or coerce a civilian population, or influence the policy of a government by intimidation or coercion, then you must find that the plaintiffs have proved that the PA or PLO committed an act of international terrorism.

Plaintiffs also allege that defendants, through their agents or employees, violated certain other provisions of the ATA, namely: Harboring a terrorist, providing material support for terrorist acts, and supporting a foreign terrorist organization. A violation of any one of those statutory provisions is itself an act of international terrorism.

Therefore, I instruct you as a matter of law, if you find that plaintiffs have proved by a preponderance of the evidence that the PA or the PLO violated any of these statutes you must find that the plaintiffs have proved the defendant

committed an act of international terrorism.

Plaintiffs allege that the defendants violated the ATA by providing material support or resources knowing or intending that they were to be used in preparation for, or in carrying out a conspiracy to murder or maim persons. After June 25, 2002, it also became a violation of the ATA to provide material support or resources for a bombing of a public place with intent to cause death or serious physical injury.

"Material support or resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, and transportation, except medicine or religious materials.

You need not find that a person for whose conduct a defendant is liable intended that a specific crime or terror attack be carried out. Rather, you may find that a defendant had the requisite intent if a person for whose conduct a defendant is liable knew that the entities or individuals to whom they provided material support or resources were engaged in terrorist activities, or that the support could be used to carry out a terrorist act.

Thus, if you find that a person for whose conduct a defendant is liable acted with the required intent and provided

material support or resources so that a person could carry out a bombing of a public place or a conspiracy to commit murder, you will have found that plaintiffs have proved that the defendant is liable for providing material support for the terrorist act that resulted.

Plaintiffs also allege that defendants violated a separate provision of the ATA by knowingly providing material support to a foreign terrorist organization. To prove this portion of their claim, plaintiffs must establish the following elements by a preponderance of the evidence:

First, that the defendants provided material support or resources as I have already instructed you.

Second, that the defendants provided this support or these resources to a foreign terrorist organization, specifically, as you heard, Hamas or the AAMB, Al Aqsa Martyrs Brigade.

I instruct you as a matter of law that Hamas has been designated a foreign terrorist organization by the United States Secretary of State, and was so designated by the secretary on October 8, 1997. I instruct you as a matter of law that the AAMB has been designated a foreign terrorist organization by the United States Secretary of State, and was so designated by the secretary on March 27, 2002.

Consequently, if you find by a preponderance of the evidence that the defendants provided any of the types of

material support or resources I described to the AAMB or Hamas, or furnished to any person acting on behalf of the amount AAMB or Hamas, after Hamas or the AAMB were designated foreign terrorist organizations, plaintiffs' burden with respect to this element has been met.

You should find that defendants provided material support or resources to the AAMB or Hamas if you find that the defendants provided support or resources to a person or entity who was operating under the AAMB's or Hamas's direction or control or if that person or entity was organizing, managing, supervising, or otherwise directing the operation of the AAMB's or Hamas's personnel or resources. Conversely, if plaintiffs do not prove that the defendants provided support or resources to a person or entity who was operating under the AAMB's or Hamas's personnel or resources, then you should find the defendants did not violate the ATA by providing material support or resources to a foreign terrorist organization.

Third, that in providing material support or resources to a foreign terrorist organization the defendants did so knowingly. I previously explained to you the definition of "knowingly," and you will follow those instructions here. For this element to be satisfied, plaintiffs must prove by a preponderance of the evidence that the defendants knew that they were providing material support to the AAMB or Hamas, and that defendants also knew that the AAMB or Hamas had been

designated by the Secretary of State as a foreign terrorist organization, or during a time after such designation, the defendant knew that the AAMB or Hamas engaged in terrorist activity or terrorism.

I have already explained to you that the AAMB and Hamas were, as of certain dates, designated foreign terrorist organizations by the U.S. Secretary of State. If you find that the defendants provided material support to the AAMB or Hamas after defendants knew that the AAMB or Hamas were designated foreign terrorist organizations, plaintiffs' burden with respect to this element is met.

Alternatively, if you find that defendants provided material support to the AAMB or Hamas, and knew that the AAMB or Hamas engaged in terrorist activity, or terrorism, plaintiffs' burden with respect to this element is met. The term "terrorist activity" includes the use of any explosive, firearm, or other weapon or dangerous device, other than for monetary gain and with the intent to endanger the safety of one or more individuals or to cause substantial damage to property.

If all of these elements are met, you may find the defendants liable for providing material support to a foreign terrorist organization.

Plaintiffs separately allege that the defendants violated the ATA by harboring or concealing a person who they knew, or had reasonable grounds to believe, committed or was

about to commit an act of international terrorism that injured a plaintiff in this case.

To "harbor or conceal" means to do any physical act that provides assistance -- including food, shelter, or other assistance -- to aid another in avoiding detection or apprehension.

In order to prove that a defendant is liable for a particular claim under the ATA, plaintiffs must demonstrate the involvement of a senior official or other person having duties of such responsibility that his or her conduct may fairly be considered to represent the PLO or PA.

Now, with regard to both the PA and the PLO, plaintiffs contend that each is directly liable for the acts of its agents who committed terrorist acts or provided material support on the PA and PLO's behalf. Entities like the PA and the PLO can act only through their agents -- that is, their employees, officers or other authorized representatives. An individual person need not be an employee of the entity in order to be an agent. And, while an agent may be an individual person, it may also be another entity. In order to find that the act of an agent was binding on the entity, you must find that the agent had authority to act in the manner in which he or she is alleged to have acted.

The authority of an agent to act may be express, apparent or inherent.

Express authority is created by the direct verbal or written giving of that authority by the entity to its agent. For example, express authority to perform certain duties may be a specific direction or part of an employee's written or verbal contract.

Apparent authority, on the other hand, is the authority which a principal by reason of its acts and conduct leads a third person reasonably to believe that its agent possesses. Apparent authority can be created by appointing a person to a position, such as manager or other position, which carries generally recognized duties. In other words, apparent authority may be based on a holding out to the world of the agent, in his particular position, by the entity, to third parties who deal with this agent. Knowing of his position, the agent has apparent authority to do all those things ordinarily done by someone in that position, regardless of any unknown limitations which are imposed on the particular agent.

In such circumstances, the entity is responsible to third parties, who are unaware of any lack of authority to the same extent as if the power to act had been directly conferred. Therefore, if you find upon all the facts and circumstances of the particular case that the defendant has, by reason of words or conduct, given the appearance of the agent's authority to act on its behalf, then the defendant is responsible for such acts of its agent as if the defendant itself committed the

acts.

There are also situations in which an agent has inherent authority to act for the defendant, even when the defendant has not granted the agent either the express or apparent authority to act on its behalf. This inherent authority may exist, provided the acts in question are within the scope of the agency, even though the acts may be criminal or tortious. For example, an act is within the scope of an agent's inherent authority if it is sufficiently related to the kind of act that the agent was employed to perform, if it was done substantially within the time and space limits of the job, and was actuated, at least in part, by a purpose to serve the entity.

Therefore, if you find that the agent acted with express, apparent or inherent authority to act on behalf of the PA or PLO, you may find that the PA or PLO were responsible for his or her conduct.

Now, as to the PA, plaintiffs also contend that the PA is liable as an employer for the acts of its employees that were committed within the scope of their employment.

An employer is responsible for the act of its employee if the act is in furtherance of the employer's activities and is within the scope of the employee's authority. An act is within the scope of an employee's authority if it is performed while the employee is engaged generally in the performance of

his or her assigned duties or if the act is reasonably necessary or incidental to the employment. The employer need not have authorized the specific act in question.

Among the factors you may consider in deciding whether an employee was acting within the furtherance of the PA's activities and within the scope of his authority, you may include the connection between the time, place and occasion for the act; the history of the relationship between the PA and its employee as spelled out in actual practice; whether the act is one commonly done by such an employee; the extent of the departure from normal methods of performance and whether the specific act was one that the PA could reasonably have anticipated. If you find that the employee caused the injury to the plaintiff while acting within the scope of his authority and in furtherance of the PA's activities, then the PA is legally responsible for its employee's conduct.

Even though you find that the PA as the employer specifically instructed the employee not to perform the shootings or bombings that are at issue in this case, if you find that it was done in furtherance of the employer's activities and was reasonably foreseeable by the employer, you may find that it was within the scope of the employee's authority.

It is not sufficient that the employee was simply engaged in the employer's service at the time of the incident

giving rise to the action. The test is whether the employee's act was in furtherance of the employer's activities and was incidental to the performance of duties entrusted to the employee. Where the employee's act was committed solely for personal ends, rather than in furtherance of the employer's interest, the employer will not be held liable.

In order to recover damages, plaintiffs must demonstrate that they suffered physical, mental, emotional, or financial injury as a result of defendants' act of international terrorism. In this case, plaintiffs' injuries can include any invasion of a personal right, including emotional or mental suffering, in addition to physical or financial suffering. As such, family members of victims and decedents, for example, can suffer mental anguish and emotional pain and suffering.

Note that injury differs from damages, which are the means of measuring the injury in dollars and cents. The plaintiffs meet their burden of showing damages if they show some injury caused by the unlawful activities complained of. Injury beyond this minimum showing goes only to the amount of damages and not to the question of injury.

Plaintiffs must prove that they were injured because of the defendants' unlawful activity. To show this, plaintiffs must show, first, that the unlawful conduct played a substantial part in bringing about or causing their injuries,

and, second, that the injuries were either a direct result of the unlawful activity, or at least a predictable consequence of it.

There may, of course, be a number of causes for a particular injury. The plaintiffs do not have to prove that unlawful activity of the defendant was the sole cause of their injuries. The plaintiffs meet their burden if they show that unlawful activity of the defendant substantially contributed to their injury, even though other factors may also have contributed significantly. The plaintiffs are not required to show that such acts were a greater cause of their injuries than other factors.

Now, my charge to you on the law of damages must not be taken as a suggestion that you should find for any plaintiff. It is for you to decide on the evidence presented and the rules of law I have given you whether a plaintiff is entitled to recover from defendant PA or defendant PLO. If you decide that the plaintiffs are not entitled to recover from either of the defendants, you need not consider damages. Only if you decide that a plaintiff is entitled to recover will you consider his or her measure of damages.

Now, if you find that a plaintiff is entitled to recover from defendant PA and/or defendant PLO, you must render a verdict in a sum of money that will justly and fairly compensate that plaintiff for all injuries and disabilities he

or she sustained from the terrorist attack.

The purpose of the law of damages is to award, as far as possible, just and fair compensation for the loss, if any, which resulted from a defendant's violation of a plaintiff's rights. If you find that defendant PA and/or defendant PLO is liable to a plaintiff, then you must award that plaintiff a sum of money that will justly and fairly compensate him or her for any injury proximately caused by either defendant's conduct.

These are known as compensatory damages. Compensatory damages seek to make the plaintiff whole -- that is, to compensate him or her for the damage suffered.

Compensatory damages are not limited merely to expenses that plaintiff may have borne. A prevailing plaintiff is entitled to compensatory damages for past and future lost earnings, and for the physical injury, pain and suffering, mental anguish, shock and discomfort, and loss of love and companionship that he or she has suffered because of a defendant's conduct.

I remind you that you may award compensatory damages only for injuries that a plaintiff proves were proximately caused by a defendant's wrongful conduct. Any damages that you award must be fair and reasonable, neither inadequate nor excessive. You should not award compensatory damages for speculative injuries, but only for those injuries that a plaintiff has actually suffered or which he or she is

reasonably likely to suffer in the near future.

The fact that a plaintiff may already have a physical or mental condition that makes him or her more susceptible to injury than a normal healthy person does not relieve the defendant of liability for all injuries sustained as a result of defendant's actions. The defendant is liable for the injuries it caused even though those injuries are greater than what would have been sustained by a normal healthy person under the same circumstances.

During his closing remarks, counsel for plaintiffs suggested a specific dollar amount to be awarded to plaintiffs. An attorney is permitted to make suggestions as to the amount that should be awarded, but those suggestions are argument only and not evidence and should not be considered by you as evidence of plaintiffs' damages. The determination of damages is solely for you, the jury, to decide.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a plaintiff to prove the amount of his or her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

In all instances, you are to use sound discretion in

fixing any award of damages, drawing reasonable inferences where you deem appropriate from the facts and circumstances in evidence.

Ladies and gentlemen, I am going to give you a verdict form, and this verdict form has the questions that you need to answer. The first half of this verdict form has to do with the liability and questions about liability, and you should answer those questions yes or no, depending on your determination with regard to those questions.

As has already been indicated, basically, the questions fall into categories of: Did the plaintiffs prove by a preponderance of the evidence that the defendant is liable for a particular attack because the defendant knowingly provided material support or resources that were used in preparation for or in carrying out that attack?

A question with regard to the employer/employee liability as the parties have argued about: If the plaintiffs prove by the preponderance of the evidence that the defendant PA is liable for the attack because an employee of the PA, acting within the scope of his employment, and in furtherance of the activities of the PA, either carried out or normally provided material support or resources that were used in preparation for or in carrying out the attack.

Then, as to certain of the attacks, there is a specific question about providing material support to a

designated foreign terrorist organization. For example, one of the questions would be: Did plaintiffs prove by a preponderance of the evidence that the defendant is liable for the attack because that defendant, the PLO or PA, knowingly provided to the Al Aqsa Martyrs Brigade, after its designation as a foreign terrorist organization, material support or resources that were used in preparation for or in carrying out the attack?

A similar question with regard to Hamas with regard to the attack on the Hebrew University in which it is attributed to Hamas.

The other type of question as to one incident, as it was explained to you, is the question having to do with harboring a person, and the question is: Did the plaintiffs prove by a preponderance of the evidence that defendant is liable for the attack because the defendant harbored or concealed a person who they knew or had reason to believe committed or was about to commit a particular attack?

Now, the way I have it organized, the questions are on each separate attack. You will see we start in chronological order. It starts with the January 22, 2002 Jaffa Road shooting, and then there are three questions that are relevant to that attack under liability. Then the second one goes to the January 22, 2002 Jaffa Road bombing, and there are three questions relevant to that attack. And then it goes on to each

of the other attacks in chronological order.

After you get through the questions on liability, you will see a page in between liability and damages, and this page basically says, if you answered yes in response to at least one previous question about the liability, please proceed to answer the related damages question, beginning on page 10.

If you answered no in response to every previous question, you said no, there is no liability as to any of those questions, you should proceed no further. Obviously, if you find no liability as to any of the questions, there is no reason for you to consider damages. You only consider damages if you find that the PA and/or PLO are liable to one or more plaintiffs.

Then if you go to the damages, basically the question is organized the same way, it's under damages, organized by incident. I have laid out specific questions as to each plaintiff, and the specific question is: What amount of damages, if any, do you award as compensation for plaintiff's injuries that you determine were caused by the terrorist attack?

Then there will be a space that you will put a dollar amount and you just put a dollar amount, if you get to those applicable questions, if you find liability as to that particular plaintiff. Each plaintiff is organized under each attack and the questions are asked on each attack.

Ladies and gentlemen, the last page, your foreperson should make sure all of the questions that are appropriate to answer are answered and that it is dated and it is signed by your foreperson. Then you will bring that out with you. You just hang on to it, and you just tell us that you have reached a verdict, and then we will bring you out and we will take the verdict from the foreperson. We will ask the questions here in open court and we will take your verdict.

You are about to retire to decide this case. In order to prevail, as I indicated, the plaintiffs must sustain their burden of proof as I have explained it to you with respect to each element of their claims. If you find that the plaintiff has succeeded, you should return a verdict in the plaintiffs' favor on that claim. If you find that the plaintiff has failed to sustain the burden on any element of the claim, you should return a verdict against the plaintiff in defendants' favor.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for yourself, but you must do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Your verdict must be unanimous. But you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other

jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either side, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony reread, you may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or in requesting any testimony that you might want from witnesses.

You can ask for all of the witness's testimony. You can ask for direct or cross. You can ask for their testimony on a certain subject. Be as specific as you can about what you are interested in. We have the court reporter who has a daily transcript. We can isolate it and we will bring you back in in open court and have it read to you.

Your requests for exhibits or testimony -- in fact,

any communication with this Court -- should be made to me in writing, signed by your foreperson, and given to one of the marshals outside your door. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations, write any notes to the Court, and speak for you here in open court and render your verdict.

After you have reached a verdict, as I said, your foreperson will fill out the verdict form that has been given to you, sign and date it, and will advise the marshal outside your door that you are ready to return to the courtroom. You will just write me a separate note saying, We have reached a verdict. When I see that note and that note is handed to me, we will have you come out with the verdict form, and we will take the verdict from you in open court and hear your verdict for the first time when we hear it here in open court.

I will stress that each of you should be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoke.

Can you swear in the marshal?

(Marshal sworn)

THE COURT: Mr. Yalowitz, can I send the jury in to

begin their deliberations?

MR. YALOWITZ: Yes, sir.

THE COURT: Mr. Rochon.

MR. ROCHON: Yes, sir.

THE COURT: Ladies and gentlemen, you may now retire to begin your deliberations.

I have ordered your lunch for about 12:30. You can continue to deliberate or you can suspend while you eat your lunch and then continue. However you wish to do it.

(At 11:00 a.m., the jury retired to deliberate)

THE COURT: Anything for the record?

MR. ROCHON: Only one thing. If they were to ask for the instructions on respondeat superior, I think in the last sentence there might have been an interest -- you said interest. I don't know if your written version says interest instead of activities.

THE COURT: I said interest?

Which page?

MR. ROCHON: On page 56. The Court may have just inadvertently misspoken, or maybe your draft still had an interest. Ours says activities.

It's the very last line on page 56. Where it says "rather than in furtherance of the employer's activities."

THE COURT: It does say activities. You think I said interest?

MR. ROCHON: I know you did.

THE COURT: I'm sorry.

MR. ROCHON: Let me be very clear. It's not an issue. I am sure the jury didn't pay attention.

THE COURT: I apologize. Mine says activities. If I said interest, I misspoke.

MR. ROCHON: Like I said, it's not an issue for us.

THE COURT: As I said, if you agree and they want some or all of the jury instructions, I will sanitize it -- as a matter of fact, in that sense, I won't use the transcript. I will sanitize the written instructions without the headings and we will give it as it's written.

MR. ROCHON: We never mentioned this before, but we have no problem with the jury getting the instructions in any event.

THE COURT: Do you have a position at this point one way or the other, Mr. Yalowitz?

MR. YALOWITZ: On whether the written instructions should go back to the jury?

THE COURT: If they request it.

MR. YALOWITZ: I would want to reflect on that. I don't have a strong feeling about it, but I kind of like the way you do it.

THE COURT: As I say, you might want to hang around for about 10, 15 minutes in case they right away might ask for

some or all of the exhibits. Then, as I said, just be close enough so you can be back here in about ten minutes if we get a note, and we will call you as soon as we get any request.

MR. ROCHON: At the end of the day, I forgot what you said you do. Do you just let them go without us coming back?

THE COURT: No. I do not adjourn for the day unless we are all in court, and I will speak to them and tell them that we are adjourned for the day.

MR. ROCHON: So you bring them in?

THE COURT: Yes, I bring them in. I will bring all the parties in.

(Recess pending verdict)

(In open court; jury not present)

THE COURT: We have a note. I think everybody has looked at it. With regard to the first two items that they asked for, I understand you agreed on what they requested and we can send that in.

With regard to the deposition of Hussein Al-Sheikh, it says video or transcript, I wasn't quite sure, you have to remind me of what we have and what your suggestion is.

MR. YALOWITZ: As you may recall, on plaintiffs' case, we had a reader read the deposition of Al-Sheikh, as well as a couple of others. I don't think it was more than 20 minutes. Less than that.

THE COURT: Is the video of the same deposition?

MR. YALOWITZ: Then the video is of the same deposition, but we didn't play the video. But then on defendants' case in chief, they played the video, which I didn't like it as much. There is translation. It's hard to hear.

THE COURT: Do we have a transcript of both?

MR. YALOWITZ: Yes.

MR. ROCHON: There is a transcript of the video, yes. There is a transcript of the deposition.

THE COURT: What is your preference, to have them hear it in open court or to give them the transcript of both?

MR. ROCHON: My position would normally be to have the video played. But since I don't have it ready, I'd rather do whatever is going to get this to the jury most efficiently. We would have to go through the transcript and redact it.

The video was put together from different portions. The easiest way to do it would be to play the video. We have a link to it that we are trying to download. The IT will be here ready to play it in 15 minutes. Maybe we can do it before lunch. I don't mind giving them the two binders now and tell them we will get the depositions right after lunch.

THE COURT: For now let's go ahead and hand them the binders. If you have agreed with regard to the first two notes, let's give that to the marshal and have the CSO give that to them. Then let's keep working on this.

These are just two binders at this point?

MR. ROCHON: Yes, it is.

THE COURT: So let's have them have that. They can work with that while we further resolve this.

MR. YALOWITZ: We will hand the binders to Mr. White.

THE COURT: What did you want to do with the transcript?

MR. ROCHON: I think the easiest thing from our standpoint would be, we have the daily copy of the transcript, just give them the transcript that was read in. Then as to the video, play them the same thing they saw.

THE COURT: How long is the video?

MR. ROCHON: 40 minutes.

THE COURT: We could do that.

MR. ROCHON: I am OK with us getting a transcript of what was played, but that would take a little bit longer to get it to them than playing of the video for 40 minutes.

MR. YALOWITZ: I think, quite frankly, if the Court is comfortable getting a transcript put together, and the parties can agree on it, I don't have a problem with it. As long as the parties agree that they are giving the correct transcript, and I think it is easier with the plaintiffs' piece because all we need to do is take those pages and hand them.

THE COURT: How many pages of transcript do you have of the written transcript?

MR. YALOWITZ: You ask hard questions.

MR. ROCHON: I think it will take longer than playing the video, because putting the transcript together --

THE COURT: If we had everything ready right now, what I would say we would do is that I would give the transcript to the court reporter, have the court reporter read the transcript, play the video, and send them back in.

MR. YALOWITZ: I think, quite frankly, it's going to take more of their time. I would rather let them deliberate and deliver the transcripts. We can give them promptly one piece of it, and we can give them reasonably promptly the other. We can wait and give them both at the same time.

THE COURT: How quickly can we get this into a transcript?

MR. ROCHON: That would take a few hours.

MR. YALOWITZ: I don't think it would take a few hours.

THE COURT: You don't have a transcript?

MR. ROCHON: We have a transcript of the deposition, obviously, but we don't have a separate transcript of the portions read, and they were so interspersed in a much longer transcript, that putting it together, we don't want to send them a redacted transcript. I actually think the fastest way to get them this information -- we can play this by 12:45.

THE COURT: If that's the only thing that's going to

save us time, then what we will do is we will have to bring them out, play the video, and then we can give them the transcript.

MR. YALOWITZ: Quite frankly, I think it will be much more efficient to give them the transcript.

THE COURT: I agree, but we don't have it.

MR. YALOWITZ: We could put it together. I don't think it's going to take us hours to put it together.

THE COURT: If you can put it together before we get their tech person, then we will do it.

Also, remember, you're getting up against their lunch time. Their lunch is going to be here at 12:30.

MR. YALOWITZ: I'd rather give them the transcript now of the part that we can give them.

THE COURT: If you want to agree to that, that's fine.

MR. ROCHON: I can't agree because they have asked for Hussein Al-Sheikh so to give them the plaintiffs' portion separately.

THE COURT: I assume that that would be your position. So unless you guys can jointly come up with another solution, we will have to either play the video, if we can't get the transcript put together in the next 20 minutes, and then we will have to give them the rest of the transcript.

You have the transcript ready?

MR. YALOWITZ: No, but I don't think it's going to

take us very long to find it and print it out. It's literally just the transcript from the trial.

MR. ROCHON: The court reporter transcribed it.

MR. YALOWITZ: From mine it's easy.

THE COURT: Let's get that ready first.

Unless you come up with a better solution, we are going to bring them out, play the video, and I am going to tell them that's the complete video, and we are going to hand them the transcript that was read to them and they can take that back with them. So try to get all of that ready.

Your estimate about the video is 40 minutes?

MR. ROCHON: It took 40 minutes to play to the jury. Is that right?

THE COURT: You can't give them the transcript in that period of time?

MR. ROCHON: We can work together to try.

THE COURT: The reality is, if you're talking about waiting another 15 minutes for your guy and then playing it for 40 minutes, you have got an hour. So if you can put together a transcript in an hour, then we can just, in fairness, give them the whole thing.

MR. ROCHON: We will try working on both.

THE COURT: Start seeing how quickly you can put together a transcript. When the video guy comes, then let me know how far you are with the transcript, and we will figure

out whether or not it's going to take you another 20 minutes to put the transcript together or we should bring them out during their lunch hour for 40 minutes to listen to the video.

(Recess pending verdict)

(In open court; jury not present)

THE COURT: I understand you have a dispute over one of the requests. At this point, the petty bickering is only doing a disadvantage with this jury. They are trying to deliberate and trying to seek your assistance. So give me a solution to these problems.

MR. YALOWITZ: I don't think we have any bickering, in candor. The jury has asked for something that is not in evidence. We don't have a problem with sending it back, but the defendants object.

THE COURT: That's what I call petty bickering. That's the definition of it.

MR. YALOWITZ: I can't control it. I didn't move it in evidence. I don't have a problem with it going back.

THE COURT: It can't go back unless it's in evidence.

MR. YALOWITZ: I understand that. We just need language for a note.

MR. ROCHON: Here is what I propose. The charts are not in evidence. Here are the binders. That's all you can do.

THE COURT: That's all I can do. That's not all you guys can do.

MR. ROCHON: That's what I proposed before you came out. That's what you do. It happens all the time.

THE COURT: All right. I will do that if you're not going to agree to anything else.

MR. ROCHON: If the Court has asked whether I would agree for them to go back, no, I can't do that.

THE COURT: I will give them such a note.

Have you agreed on everything else?

MR. ROCHON: We have handled the other one.

THE COURT: Can you think of something in substitution for what they are requesting that is in evidence?

MR. YALOWITZ: There may be a some language in some of the transcripts we can go back and look for. I think we should get them the binders and not give them a written response yet. Just bring in the binders and let me look and see if there is something else that might serve as a useful substitute.

There may be some testimony. Quite frankly, I think sending back transcripts that they haven't requested, I would defer to your judgment on it.

THE COURT: My judgment would be I wouldn't do that. You can be prepared if they ask for something in substitution for this.

MR. YALOWITZ: Let's get that ready. I think you just tell them that they are not in evidence. I can't think of any other way to say it that would be more appropriate. If

somebody had a different way of saying it, I wouldn't have a problem with it.

THE COURT: Just show that to the lawyers.

MR. YALOWITZ: I don't have a problem with this.

MR. ROCHON: I don't know how this got prepared.

THE COURT: We are always one step ahead of you.

MR. ROCHON: This looks a lot like what I had suggested.

THE COURT: We read your mind.

MR. ROCHON: Just for the record, Mr. Yalowitz and I just looked at something, and it's essentially a note that says the same thing --

THE COURT: I'm sorry. For the record, we were addressing the last note asking for the charts that were displayed, I believe primarily during the opening and summation, but not admitted into evidence. They requested five binders for each of the dates. And they reiterated their request for the video deposition. Apparently, they are just looking for a certain portion anyway that detail the differences between the PLO and PA.

MR. ROCHON: Apparently they wanted a part of it, but we got it all to them, and they can figure out what they want to look at.

THE COURT: So I am going to hand them a note that says what they have described is not in evidence and that we

are sending in the five requested binders.

MR. ROCHON: Agreed.

THE COURT: Make a copy of that and mark it a court exhibit.

MR. ROCHON: Thank you, your Honor.

THE COURT: All right.

(Recess pending verdict)

(In open court; jury not present)

THE COURT: We have a note from the jury indicating that they want to adjourn for the day. So we will adjourn for the day.

I am just going to bring the jury out, and we are going to adjourn for the day. I am going to ask them to come back at 9:30 on Monday, that they should not continue talking about the case, deliberating, until all twelve jurors are there. They don't have to wait for us. They should just go right in and continue their deliberations Monday morning.

MR. YALOWITZ: Have a great weekend. We will see you then.

THE COURT: Not yet.

Bring the jury in.

(Jury present; time noted: 4:40 p.m.)

THE COURT: All right, ladies and gentlemen. We received your note indicating that you would like to adjourn for the day. So that's what we are going to do. We are going

to adjourn for the day.

What I am going to ask you to do is come in on Monday morning at 9:30. Don't continue your deliberations until all twelve jurors are in the room and have arrived. When all of the twelve jurors have arrived, then you can continue discussing the case, but don't discuss the case in anyone's absence. So you don't have to wait for us to do anything. Just go right in the jury room, and then when everyone arrives, you can continue your deliberations and we will just wait for you to contact us.

So don't discuss the case with anyone else over the weekend. Get yourself some rest. And I will see you Monday morning at 9:30.

Thank you.

THE JURY: Thank you.

(Jury exits courtroom)

THE COURT: Everyone have a good weekend. I will see you Monday morning. You don't have to be here exactly at 9:30. They will gather together and then we will just wait to get any note or hear from them after.

(Adjourned to February 23, 2015, at 9:30 a.m.)